

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 14 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)	MM Docket No. 93-107
)	
DAVID A. RINGER)	File No. BPH-911230MA
)	
ASF BROADCASTING CORPORATION)	File No. BPH-911230MB
)	
WILBURN INDUSTRIES, INC.)	File No. BPH-911230MC
)	
SHELLEE F. DAVIS)	File No. BPH-911231MA
)	
OHIO RADIO ASSOCIATES, INC.)	File No. BPH-911231MC
)	

For Construction Permit
For New FM Radio Station at
Westerville, Ohio

To: The Review Board

**OPPOSITION TO
MOTION TO DISMISS**

Wilburn Industries, Inc. ("Wilburn"), by its attorneys,
hereby submits its Opposition to the Motion to Dismiss the
Wilburn application filed by Ohio Radio Services ("ORA") on June
6, 1994. In support thereof, the following is stated:

ORA submits that Wilburn's application to construct a new FM
broadcast station to serve Westerville, Ohio, should be dismissed
because Wilburn has not amended its application to include a new
technical proposal, although Wilburn has been aware that the site
presently specified in its application no longer is available to

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it. According to ORA, the passage of six weeks after Wilburn advised the Commission that it had obtained reasonable assurance that a new site would be available to it establishes that Wilburn has failed to act with due diligence, so that any future amendment must be rejected. In these circumstances, ORA submits, the Wilburn application should be dismissed because an applicant without a tower site and without a properly amended application is ineligible for grant.

ORA's Motion is entirely fatuous and should be denied as such. As stated in the amendment filed by Wilburn on April 13, 1994, as soon as Wilburn learned that the site proposed in its application had been sold, it secured reasonable assurance of the site's continuing availability from the new owner. Although it prepared an amendment to that effect, it did not submit that amendment because the new owner thereafter changed his mind and decided not to make the site available. Accordingly, Wilburn secured a letter of reasonable assurance with respect to a different site and promptly notified the Commission that (1) its initial site no longer was available, and (2) it had located a new site. Wilburn also advised the Commission that it would be amending its application to specify operation from that new site.

The amendment contemplated by Wilburn will obviously address a variety of matters. First, a new technical proposal would have to be developed, and an entirely revised engineering section of FCC Form 301 would have to be prepared by Wilburn's consulting engineer. Second, because Wilburn previously had proposed to operate with existing equipment, the new technical proposal would entail a new evaluation and selection of the equipment to be utilized, not only the preparation of an FCC Form 301, Section V-B. Finally, given the use of a new site and the need to purchase (or lease) other equipment, the applicant must also re-examine and recertify its financial qualifications. Thus, the process of amending the Wilburn application is more extensive and complex than acknowledged by ORA. Wilburn has retained a consulting engineer who is preparing the revised engineering portion of its application and is undertaking the other inquiries and actions necessary to prepare a complete and accurate amendment. Wilburn's failure to submit an amendment within the past six or eight weeks therefore does not constitute or bespeak a lack of diligence on its part.

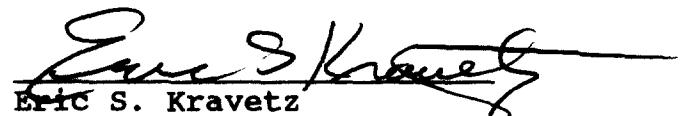
The cases cited by ORA in support of its Motion merely highlight the frivolous nature of its submission. In National Communications Industries, 6 FCC Rcd 1978 (Rev. Bd. 1991), the applicant failed to promptly advise the Commission that it had lost its site and submitted a revised technical proposal eight months after it learned of such loss. In Marlin Broadcasting of

Central Florida, Inc., 5 FCC Rcd 5751 (1990), the applicant waited sixteen months before advising the Commission of changed circumstances which affected its qualifications, i.e., that the investment firm upon which it relied for financing had gone out of business. In Brownfield Broadcasting Corp., 88 FCC 2d 1054, 50 RR2d 1259 (1982), the Commission pointed out that applicants which had waited one and two years, respectively, before amending their applications upon loss of their sites had not acted with due diligence. Those cases and the circumstances of the instant proceeding are patently distinguishable.

In view of the foregoing, ORA's Motion to Dismiss should be denied.

Respectfully submitted,
WILBURN INDUSTRIES, INC.

By:


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Its Counsel

Dated: June 14, 1994

CERTIFICATE OF SERVICE

I, Tracy A. Holden, a secretary in the law firm of Brown, Nietert & Kaufman, Chartered, do hereby certify that on this 14th day of June, 1994, I caused copies of the foregoing "Opposition to Motion to Dismiss" to be delivered by first class mail, postage prepaid, to the person named below:

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